

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NUMBER: 2010-18780

RANDALL B. WHITNEY, M.D.,

RESPONDENT.

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ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through its undersigned counsel, files this Administrative Complaint before the Board of Medicine against Respondent, Randall B. Whitney, M.D. thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 458, Florida Statutes.

2. At all times material to this Complaint, Respondent was a licensed physician within the state of Florida, having been issued license number ME 8859.

3. Respondent's address of record is 820 Indigo Court, Port Orange, Florida 32129.

4. On or about March 27, 2011, Respondent was arrested for intentionally striking Patient A.R. during or following an attempt to prepare the patient for a procedure.

5. On or about October 4, 2011, Respondent plead nolo contendere to one count of the crime of misdemeanor battery, a violation of Section 784.03(1)(b), Florida Statutes (2011), in the Circuit Court for Orange County, Florida in case number 2010 CF4271000 A0X.

6. Respondent was sentenced to time served of one (1) day, a fine and court costs and fees.

7. Respondent's plea of nolo contendere to misdemeanor battery relates to his practice of medicine or to his ability to practice medicine in that he engaged in the conduct of committing battery upon the patient due to the patient's response to attempts to place an Intravenous line. Respondent was acting in his capacity as a physician and was at the clinic where he performed procedures. Further, the patient was being prepared for a procedure to be performed by Respondent. Without a license to practice medicine, Respondent would not have been in a position to have such intimate contact with the patient.

8. The crime of battery to which Respondent pled nolo contendere requires an actual and intentional touch against the will of the other. A physician licensed in the State of Florida is one of a small number of licensed professionals allowed to intimately examine patients. The Legislature has vested a trust and confidence in these licensed professionals by permitting them to do so. Engaging in conduct wherein that trust and confidence is violated presents a danger to the public health, safety, or welfare, and does not correspond to that level of professional conduct expected of one licensed to practice medicine in this state.

9. Respondent has demonstrated, through his plea as set forth above, a flagrant disregard for the duties and responsibilities imposed upon a physician practicing in the State of Florida and for the health and welfare of his patients and for the citizens of this state. Respondent's actions of actually and intentionally touching another against her will, constitutes a breach of the trust and confidence that the public deservedly expects and that the Legislature placed in him by issuing him a license to practice medicine. It directly relates to the ability to practice medicine.

10. Section 456.072(1)(c), Florida Statutes (2011), provides that being convicted or found guilty of, or entering a plea of nolo contendere to,

regardless of adjudication, a crime in any jurisdiction which relates to the practice of medicine or to the ability to practice medicine subjects a licensee to discipline by the Board of Medicine.

11. On or about October 4, 2011, Respondent plead nolo contendere to misdemeanor battery in the Circuit Court for Orange County, Florida in case number 2010 CF4271000 A0X, a crime related to the practice of medicine or to the ability to practice medicine.

12. Respondent violated Section 456.072(1)(c), Florida Statutes (2011), by entering a nolo contendere to a crime related to the practice of medicine or his ability to practice medicine.

WHEREFORE, the Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 17th day of August 2012.

John H. Armstrong, MD
State Surgeon General and
Secretary of Health



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CLERK **Angel Sanders**
DATE **Aug 20 2012**

PCP Date: August 17, 2012
PCP Members: Dr. Lage, Dr. Avila, Mr. Mullins

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NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.